HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION No. 3178 of 2005

PETITIONER : Dinesh Kumar Singh, S/o Kanhai Singh, Aged about 38 years, Village Gram Panchayat Bhadgaon (Post Office BALCO), Tehsil & District Korba (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh Through the Secretary, Department of Panchayat and Social Welfare, D.K.S. Building, Mantralaya, Raipur, Chhattisgarh.

2. Collector, Korba (C.G.)

3. Chief Executive Officer, Janpad Panchayat, District Korba (C.G.)

4. Gram Panchayat, Bhadgaon, Through The Sarpanch, Bhadgaon, District Korba (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

Present: Shri S.R.J.Jaiswal, Advocate for the petitioner.
Shri V.V.S.Moorthy, Deputy Advocate General with Shri Sushil Dubey, Govt. Advocate for the State / respondent no. 1 and 2.
Shri Manoj Jaiswal, Advocate for respondent no. 4.

ORDER

(Passed on 19th day of April, 2007)

1. By this petition, filed under Article 226/227 of the Constitution of India, the petitioner has impugned the order dated 28.05.2005 (Annexure P/1) passed by the Chief Executive Officer, Janpad Panchayat Korba. whereunder the petitioner has been removed from the post of Panchayat Secretary.

(95)

2. The indisputable facts, in nutshell, are that pursuant to the resolution dated 07.03.1998 passed by the Gram Panchayat Bhadgaon, the petitioner was appointed as Panchayat Karmi. Thereafter, vide order dated 07.03.1998 (Annexure P/2) he was appointed as Panchayat Secretary under the provisions of Section 69(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993). As the petitioner was found absent during the visit of the Chief Minister of the State, on the basis of instructions of the Chief Minister, a meeting of the Gram Sabha was held on 5.6.2005 and it was unanimously decided that the petitioner be removed from the post of Panchayat Karmi (Secretary) and he was removed from the post of Panchayat Secretary vide order dated 28.05.2005 (Annexure P/1) passed by the Chief Executive Officer, Janpad Panchayat Korba.

3. The petitioner has filed this petition on the ground that the principle of natural justice as envisaged in Rule 7 of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules, 1999') has not been complied with. Thus the impugned order dated 28.05.2005 is vitiated and deserves to be quashed.

4. Mr. S.R.J Jaiswal, learned counsel appearing for the petitioner would submit that no opportunity of hearing was afforded to him and no charge-sheet was issued as envisaged under the Rules, 1999. Thus, the impugned order is vitiated and deserves to be quashed.

5. Mr.V.V.S.Moorthy, learned Deputy Advocate General appearing for the respondent no. 1 and 2 and Mr. Manoj Jaiswal, Advocate for respondent no. 4 would submit that admittedly, no notice was given to the petitioner.

6. After hearing the learned counsel appearing for the parties and perusing the pleadings and documents appended thereto, it is evident that no notice was given to the petitioner.

(96)

7. A Division Bench of this Court in Writ Petition No. 1656 of 2004 (Rooplal Nayak Vs. The State of Chhattisgarh & Others) has held that removal of a Secretary from the post of Gram Panchayat, initially appointed as Panchayat Karmi would be governed by the provisions of Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'The Rules, 1999'). Withdrawal of charge of the post of Secretary from the petitioner, being Panchayat Karmi tantamounts to reduction in rank and since reduction in rank is a major penalty in terms of Rule 5(b)(iv) of the Rules, 1999, it cannot be imposed without conducting a regular departmental enquiry as envisaged under Rule7 of the Rules, 1999.

8. It is admitted case that no enquiry was conducted before passing the impugned order dated 28.05.2005 (Annexure P/1). The impugned action of the respondents tantamounts to removal which is a major penalty and the same cannot be imposed without conducting a regular enquiry.

9. For the aforesaid reasons, this petition is allowed and the impugned order dated 28.05.2005 (Annexure P/1) is quashed. Consequently, the petitioer is entitled to all the benefits, pecuniary and otherwise.

10. It is made clear that this order will not come in the way of the respondent/Gram Panchayat or any other respondent, as the case may be from initiating the disciplinary action against the petitioner, if so advised, in accordance with law and in the terms of the procedure prescribed in Rule 7 of the Rules, 1999.

11. In the facts and circumstances of the case, the parties shall bear their own cost.

Sd/-
Satish K. Agnihotri
Judge

Amit